

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1119**

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**Introduced by Assembly Member Emmerson**

February 27, 2009

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An act to add Section 3260.05 to the Civil Code, relating to works of improvement.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1119, as amended, Emmerson. Works of improvement: payments.

Existing law requires an owner of a private work of improvement to release retention proceeds withheld from any payment within 45 days after the date of completion. Existing law requires a public entity to release retention proceeds withheld from any payment by the public entity within 60 days after the date of completion. Existing law requires an original contractor to pay any subcontractor within 10 days from the time that all or any portion of retention proceeds are received by the original contractor. Existing law requires an original contractor or subcontractor to pay any subcontractor within 10 days from the time of receipt of each progress payment, unless otherwise agreed to in writing. Existing law imposes a penalty of 2% on the amount due per month on funds that are improperly withheld in a contract dispute relating to public and private works of improvement, as specified. ~~The Contractors' State License Law provides for the licensing and regulation of contractors by the Contractors' State License Board.~~

Existing law requires any person or corporation that has contracted to do business with a public utility to pay any subcontractor within 15

working days of receipt of each progress payment from the public utility, except as specified. Existing law also requires a state agency that fails to make any progress payment within 30 days after receipt of the payment request to pay interest at the rate of 10% per year.

~~This bill would, notwithstanding any other provisions, require the owner to pay the contractor within 30 days of a demand for payment, except as specified, for a contract for a public or private work of improvement with respect to contracts entered into on or after January 1, 2010, and would subject a licensed contractor under the Contractors' State License Law to disciplinary action by the Contractors' State License Board for a violation of these provisions. The bill would require all owners to release retention proceeds withheld from any payment within a 45-day period, and, upon receipt of all or any portion of the retention proceeds or final payment, or any progress payment, would require an original contractor or subcontractor to pay his or her subcontractors within a 7-day period. The bill would also make the 2% penalty described above applicable to all owners of private and public works of improvement. The bill would additionally provide that the prevailing party in any action for the collection of funds wrongfully withheld is entitled to attorney's fees and costs state the intent of the Legislature to reconsider prompt payment statutes regarding public and private works of improvement to aid in their clarity and application.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. *It is the intent of the Legislature to reconsider*  
 2     *prompt payment statutes regarding public and private works of*  
 3     *improvement to aid in their clarity and application.*  
 4     ~~SECTION 1. Section 3260.05 is added to the Civil Code, to~~  
 5     ~~read:~~  
 6     ~~3260.05. (a) Notwithstanding Sections 3260, 3260.1, and~~  
 7     ~~3262.5 of this code, Section 7108.5 of the Business and Professions~~  
 8     ~~Code, and Sections 7107, 10261.5, 10262, and 10262.5 of the~~  
 9     ~~Public Contract Code, or any other provision of law, this section~~  
 10    ~~applies to all contracts entered into on or after January 1, 2010,~~  
 11    ~~relating to the construction of any private or public work of~~  
 12    ~~improvement.~~

1 ~~(b) This section applies to contractual obligations between all~~  
2 ~~of the following:~~

3 ~~(1) Owners and original contractors.~~

4 ~~(2) Original contractors and subcontractors.~~

5 ~~(3) Subcontractors and subcontractors.~~

6 ~~(e) The owner shall pay to the contractor, within 30 days~~  
7 ~~following receipt of a demand for payment, any progress payment~~  
8 ~~due as to which there is no good faith dispute between the parties.~~  
9 ~~In the event of a dispute between the owner and the contractor,~~  
10 ~~the owner may withhold from the progress payment an amount~~  
11 ~~not to exceed 150 percent of the disputed amount. If any amount~~  
12 ~~is wrongfully withheld in violation of this subdivision, the~~  
13 ~~contractor shall be entitled to the penalty specified in subdivision~~  
14 ~~(g).~~

15 ~~(d) Subject to subdivision (f), within seven days from the date~~  
16 ~~that all or any portion of any progress payment is received by the~~  
17 ~~original contractor or subcontractor, the original contractor or~~  
18 ~~subcontractor shall pay to any subcontractor, unless otherwise~~  
19 ~~agreed to in writing, the respective amounts allowed the~~  
20 ~~subcontractor on account of the work performed by the~~  
21 ~~subcontractor, to the extent of each subcontractor's interest therein.~~

22 ~~(e) The retention proceeds or final payment withheld from any~~  
23 ~~payment by the owner from the original contractor, or by the~~  
24 ~~original contractor from any subcontractor, shall be subject to the~~  
25 ~~following requirements:~~

26 ~~(1) (A) Within 45 days after the date of completion, or 100~~  
27 ~~days after cessation of labor, the retention proceeds or final~~  
28 ~~payment withheld by the owner shall be released. "Date of~~  
29 ~~completion," for purposes of this subdivision, means any of the~~  
30 ~~following:~~

31 ~~(i) The date of issuance of any certificate of occupancy covering~~  
32 ~~the work by the public agency issuing the building permit.~~

33 ~~(ii) The date of completion indicated on a valid notice of~~  
34 ~~completion recorded pursuant to Section 3093.~~

35 ~~(iii) The date of completion, as defined in Section 3086.~~

36 ~~(B) Notwithstanding subparagraph (A), the release of retention~~  
37 ~~proceeds or final payments withheld for any portion of the work~~  
38 ~~of improvement that ultimately will become the property of a~~  
39 ~~public agency, may be conditioned upon the acceptance of the~~  
40 ~~work by the public agency.~~

~~(2) Subject to subdivision (f), within seven days from the date that all or any portion of the retention proceeds or final payment is received by the original contractor, the original contractor shall pay, to each of its subcontractors from which the retention proceeds or final payment has been withheld, each subcontractor's share of the retention proceeds or final payment received. However, if the retention proceeds or final payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention proceeds or final payment shall be made to the designated subcontractor.~~

~~(f) (1) If a bona fide dispute exists between an owner and original contractor, between the original contractor and a subcontractor, or between two subcontractors, the owner, original contractor, or subcontractor, as applicable, may withhold from the party with whom the dispute exists an amount not to exceed 150 percent of the disputed amount. The amount withheld shall not exceed 150 percent of the estimated value of the disputed amount. If any amount is wrongfully withheld in violation of this subdivision, the aggrieved party shall be entitled to the penalty specified in subdivision (g).~~

~~(2) Within seven days of receipt by the owner, original contractor, or subcontractor, as applicable, of written notice from the party with whom the dispute exists pursuant to paragraph (1), that any work in dispute has been completed in accordance with the terms of the contract, the owner or original contractor shall advise the notifying party of the acceptance or rejection of the disputed work. Within seven days of acceptance of the disputed work, the owner or original contractor shall release the retained portion of the disputed payment.~~

~~(g) If any payment is not made within the time periods required by this section, the owner, original contractor, or subcontractor withholding the unpaid amount shall be subject to a charge of 2 percent per month on the improperly withheld amount, in addition to any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.~~

~~(h) As applied to licensees under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), a violation of this section shall also constitute a cause for disciplinary action under that~~

1 ~~chapter, and the sanctions authorized under this section shall be~~  
2 ~~enforced by the Contractors' State License Board.~~

3 ~~(i) The remedies authorized pursuant to this section are separate~~  
4 ~~from, and in addition to, any other remedy authorized by law, and~~  
5 ~~shall also be enforceable by civil, administrative, or criminal~~  
6 ~~proceedings.~~

7 ~~(j) It shall be against public policy for any party to require any~~  
8 ~~other party to waive any provision of this section.~~

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